IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2033 OF 2007

Shri Bhagwan Dnyanoba Pasalkar .....Petitioner.

V/s

Velhe Taluka Jai Malhar
Vahatuk Sah. Sanstha Mydt.
& Ors. .....Respondents.

Mr. Amit Borkar for the Petitioner.

Ms. Sharvari Shailendra i/b P.S. Dani for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 6th July, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of Petitioner and the learned Counsel appearing on behalf of Respondent No.1.

2. Petitioner takes exception to the order passed by the Co-operative Appellate Court dated 17/8/2006 whereby it is has modified the order of the Trial Court and has directed the Petitioner to pay a sum of Rs 2,50,889/- with interest @ 15% per annum on the principal amount of Rs.1,69,670/- from the date of dispute till realization thereof. It is an admitted position that the Petitioner had obtained loan from Respondent No.1. Even the amount which was due and payable by the Petitioner to Respondent No.1 was not paid. A dispute was filed in the court of Judge, Co-operative Court No.1, Pune. The

Co-operative Court directed that the Respondent No.1 should recover an amount of Rs.34,309.00 from the present Petitioner @ 12% per annum. Against this order, Respondent No.1 preferred an appeal before the Co-operative Appellate Court. The Co-operative Appellate Court enhanced the said amount and modified the order passed by the Co-operative Court.

3. The learned Counsel appearing on behalf of the Petitioner submits that both the Courts below have not taken into consideration the fact that the Petitioner had deposited various amounts from time to time and that this amount has not been taken into consideration by Respondent No.1. It is submitted that from the account extract which is annexed to the Petition, it could be seen that both, principal as also interest had increased though various amounts were deposited by the Petitioner from time to time. He submitted that, therefore, the calculation of interest made by Respondent No.1 was not correct. He submitted that, further, Respondent No.1 - Society had gone into liquidation at the time of filing of the appeal and, therefore, Respondent No.1 could not have pursued the appeal before the Co-operative Appellate Court in view of provisions of section 109 of the Co-operative Societies Act.

4. It is not possible to accept the said submissions made by the learned Counsel appearing for the Petitioner. It is an admitted position that the Petitioner had obtained loan from Respondent No.1 in 1982 for an amount of Rs. 1,69,650/-. It is the case of Petitioner that upto December 1991, he has deposited an amount

of Rs 1,61,108/- with the Bank. The Lower Appellate Court has recorded that the Petitioner had not challenged the entries which were made in the Ledger Books regarding debit and credit which was given by the Bank in Ledger Account. Thus, since the entries in the Ledger were not disputed by the Petitioner during trial, it is now not open for the Petitioner to challenge those entries. There is nothing on record to indicate that the Petitioner had asked the Bank's witness regarding genuineness of the entries. In view thereof, the Lower Appellate Court has rightly taken into consideration the error committed by the Trial Court and has accordingly enhanced the said amount. There is nothing on record to indicate that Respondent No.1 has gone into liquidation. This fact has not been averred either before the Lower Appellate Court or in this Petition. The said submission also, therefore, cannot be accepted. There is no reason, therefore, to interfere with the order passed by both the Courts below. There is no merit in the submissions made by the learned Counsel appearing on behalf of the Petitioner. Petition is accordingly dismissed.

(V. M. KANADE, J.)